

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) P-3818						
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Application Number 08/928,272</td> <td style="width: 50%; padding: 5px;">Filed September 12, 1997</td> </tr> <tr> <td colspan="2" style="padding: 5px;">First Named Inventor Michael J. Iskra</td> </tr> <tr> <td style="padding: 5px;">Art Unit 3771</td> <td style="padding: 5px;">Examiner Teena Kay Mitchell</td> </tr> </table>		Application Number 08/928,272	Filed September 12, 1997	First Named Inventor Michael J. Iskra		Art Unit 3771	Examiner Teena Kay Mitchell
Application Number 08/928,272	Filed September 12, 1997							
First Named Inventor Michael J. Iskra								
Art Unit 3771	Examiner Teena Kay Mitchell							
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. <small>See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</small> <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>52,515</u> </div> <div style="width: 45%; text-align: center;"> <u>/Mark Lindsey/</u> Signature <u>Mark Lindsey</u> Typed or printed name <u>201-847-6262</u> Telephone number <u>February 26, 2008</u> Date </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ </div> <div style="width: 45%;"></div> </div> <p><small>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</small></p>								
<input type="checkbox"/> *Total of _____ forms are submitted.								

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

PRESENTATION OF PRE-APPEAL BRIEF REASONS FOR REVIEW

A complete listing of the current pending claims 1 and 5-9 can be found in Applicant's Response dated January 28, 2008 to the Final Office Action dated November 26, 2007.

Claims Rejections – 35 USC § 102

Claims 1 and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,945,928 to Ayres, ("Ayres").

This rejection is respectfully traversed.

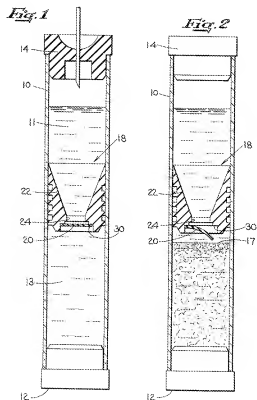
Of the claims rejected, claim 1 is independent, with the remaining claims dependent thereon.

Claim 1 recites among other things an assembly with the following features:
an elongate tubular housing having opposed first and second ends; and
a solid partition forming a closed bottom positioned within said housing between said first and second ends;.....
said housing defining a volume for specimen collection and containment therein between said first end and said partition;
said second end forming a false bottom comprising a bottom end below said partition,
said bottom end comprising an annular skirt and a semi-spherical bottom.

Applicant submits that Ayres fails to disclose at least the claimed features of:

- (a) a semi-spherical bottom,
- (b) a solid partition, and
- (c) a false bottom,

The Examiner proposes that Ayres (See Figs.1 and 2 shown below) discloses a semi-spherical bottom.



Applicant respectfully points out that Ayres discloses an evacuated glass tube having closed ends and that the lower end of glass tube (10) is a hollow cylinder.

Ayres fails to disclose a semi-spherical bottom.

Thus, Ayres fails to anticipate claim 1.

In addition, Ayres discloses a valve fixedly disposed between the ends to divide the tube into upper and lower chambers. The valve includes an elastomeric body having a centrally located circular opening 24 with a flap valve 20 closing the opening. (see Col. 2 lines 51 to 59, emphasis added). The flap has a specific gravity greater than blood and when subjected to centrifugal forces will unseat to open the valve so that the chambers communicate (see Col. 2 lines 51 to 59, emphasis added).

Thus, the valve 18 of Ayres is not a solid partition as claimed in the present invention as it allows the upper and lower chambers to communicate.

In addition, Ayres discloses that when the tube 10 is to be filled with a blood sample, stopper 14 is punctured with a cannula so that blood is drawn into the evacuated upper chamber. As the upper chamber fills with blood, a pressure differential is created across flap 20 causing it to be flexed downwardly and be unseated from surface 30. The unseating of flap 20 allows blood to flow into the lower chamber so that the entire tube is filled with the blood sample (see Col. 3 lines 27 to 34, emphasis added) upon collection.

Therefore, Ayres fails to disclose a false bottom.

For these reasons Applicant submits that independent claim 1 and dependent claim 6, are not anticipated by the Ayres reference.

Nor would Ayres render claim 1 obvious.

There is no suggestion in Ayres to have a semi-spherical bottom at the base of the glass tube (10). In fact Ayres teaches away from a semi-spherical bottom by requiring a hollow cylindrical tube to be provided in order to allow sufficient securement and sealing of the stopper (12) within the tube.

Furthermore, there is no suggestion in Ayres whatsoever to have a solid partition, within the glass tube (10). In contrast, Ayres teaches that it is essential for the valve (18) to provide a passageway (24) between the upper and lower chambers so that the sample can flow between the upper and lower chambers (see Col. 3 lines 19 to 34). Thus a solid partition would destroy the function of Ayres.

In addition, there is no suggestion in Ayres to have a false bottom. Conversely the use of a false bottom in Ayres would render the tube inoperable.

Accordingly, it is submitted that the container assembly as defined by claim 1 is not taught or suggested by Ayres. In addition, claims 5-9 being dependent on claim 1 are likewise patentable over the cited reference.

Claims Rejections – 35 USC § 103

Claims 5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ayres in view of U.S. Patent No. 5,458,854 to Burns ("Burns").

These rejections are respectfully traversed.

Ayres fails to disclose, teach or suggest the invention of claim 1 for the reasons as discussed above.

Burns is cited for use of a partition having an arcuate shape, a thermoplastic material and outside tube diameter dimensions.

Applicant submits Burns fails to disclose, teach, or suggest the claimed assembly of claim 1 as discussed previously and does not remedy the shortcomings of Ayres. In addition, claims 5 and 7-9 being dependent on claim 1 are likewise patentable over the cited reference.